beyond the District's borders. Stated simply, the Act does nothing other than regulate out-of-State conduct.

If statutes regulating the out-of-State manufacture and sale of products were deemed constitutional, as the decision below concluded, national commerce in individual products could be stifled – even eliminated – because of the policy choices of a single State. Assume that State A imposed liability upon the manufacturers and sellers of widgets for any injuries caused there by widgets. Assume further that, like virtually any product, widgets can be transported – legally or illegally – into any jurisdiction, including State A. Much as widget manufacturers and sellers might actively avoid conducting business in State A because of the liability rules there, an unrelated third-party could still subject them to liability in State A simply by transporting the widget there. The only way for the businesses to avoid liability in State A would be for them to cease the manufacture or sale of widgets anywhere – all because of the policy choices of a single State. Under such a regime, individual States would wield enormous power to regulate the national economy.

For this reason, statutes such as the Act that regulate the out-of-State manufacture and sale of products also have important consequences for personal jurisdiction rules. Specifically, in an effort to avoid State A's liability rules, a manufacturer or seller may have decided not to "purposefully direct" its activities toward State A. *See, e.g., Asahi Metal Indus. Co. v. Sup. Ct. of Cal.*, 480 U.S. 102, 112 (1987); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985). Notwithstanding such conscious decisions to avoid contacts with State A, statutes such as the Act purport to subject that manufacturer or seller to personal jurisdiction in State A simply because an unrelated third-party transported a product into the State, causing effects within State A. If in-State effects alone were sufficient to subject a manufacturer or seller to liability in State A, traditional understandings of

personal jurisdiction – as well as the due process notions that underlie them – would be eradicated. Every State would have the ability to regulate every business because of the possibility of in-State effects, notwithstanding the lack of "minimum contacts."

The obvious corollary to the foregoing is that, if each State had unlimited power to enact national rules, there could be several or many sets of such rules. Businesses could then face an unmanageable patchwork of inconsistent State regulations. *See, e.g., Granholm v. Heald*, 125 S. Ct. 1885, 1896 (2005) (discussing the current patchwork of State laws regarding shipments of out-of-State wine and stating that "[a]llowing States to discriminate against out-of-state wine invite[s] a multiplication of preferential trade areas destructive of the very purpose of the Commerce Clause") (internal quotations omitted).

In short, the *amici* believe that State statutes regulating the out-of-State manufacture and sale of products – and the effects-based jurisdictional doctrine that inspires them – are unconstitutional. If the vision of State power articulated in the decision below were to stand, one State acting alone, or several States together, could make certain businesses completely unprofitable to conduct even outside the regulating States' borders.

CONCLUSION

To preserve the integrity of Congressional prerogative as the exclusive lawgiver in cases concerning the national economy and to protect the livelihood of all businesses, this Court should grant the petition, review the Act and strike it as unconstitutional. Accordingly, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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IN THE

Supreme Court of the United States

BERETTA U.S.A. CORP., ET AL.,

Petitioners,

v.

DISTRICT OF COLUMBIA,

Respondent.

BERETTA U.S.A. CORP., ET AL.,

Petitioners,

v.

BRYANT LAWSON, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari
To The District Of Columbia Court Of Appeals

PETITIONERS' REPLY IN SUPPORT OF THEIR MOTION TO DEFER CONSIDERATION OF PETITION FOR WRIT OF CERTIORARI

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REPLY IN SUPPORT OF PETITIONERS' MOTION TO DEFER

Petitioners' motion seeks a brief deferral of this Court's consideration of their pending petition for certiorari, on the grounds that Congress is poised to pass legislation that will constitute an intervening legal development with direct and substantial bearing on this Court's disposition of the petition. *See* R. Stern, et al., SUPREME COURT PRACTICE § 5.9 at 311 (8th ed. 2002) ("[A] petition for certiorari may be held, without the Court's taking any action, until some event takes place that will aid or control determination of the matter."). The District of Columbia has not filed an opposition to the motion to defer.[1]

The individual respondents, however, oppose deferral on the basis that passage of the Protection of Lawful Commerce in Arms Act is uncertain. Brief in Opposition at 1-2. But uncertainty as to an intervening legal development by no means precludes deferral, as illustrated by *Trans World Airlines, Inc. v. Zipes*, where this Court granted a motion to defer pending the resolution of settlement proceedings. *See* 442 U.S. 916, 916 (1979) (order on deferral), 455 U.S. 385, 390 (1982) (decision on merits).

Notably, the individual respondents do not dispute that this case falls squarely within the plain language of S. 397. Nor do they contend that they would be prejudiced by a brief delay that would not extend beyond December 31, 2005 at the latest. Under these circumstances—and where the District of Columbia has not even filed an opposition to petitioners' motion—a brief deferral is warranted.

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[1] In fact, no respondent has filed a response to the petition itself. Accordingly, this Court may wish to request a response to the petition before taking any action.

CONCLUSION

For all the reasons set forth in petitioners' motion, and for all the reasons stated above, this Court should briefly defer consideration of the petition for certiorari in this case until the House acts on the bill and, if Congress passes the bill, until the President signs it into law or vetoes it.

Respectfully submitted,

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Dated: September 16, 2005